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Cases on Ethics in Sustainable Investments

INSTITUTIONAL SALES AND MARKETING

CFA Society
United Kingdom

SALES, MARKETING & INVESTMENT COMMUNICATIONS ROLES AT INSTITUTIONAL INVESTORS

Within institutional investors, communications professionals stand closest to the risk of 'greenwashing'. They must ensure that sales and marketing literature and communications are accurate and do not exaggerate the sustainability credentials of their firms or its products. Regulations in the US, the EU and the UK have tightened up on the precise terminology that firms can use to describe the sustainability attributes of different investment products, and greenwashing can be a serious and costly breach.

1) Sustainability Context:

There are increasing societal as well as commercial pressures on firms to present as green or sustainable an image as possible, both for their firm and their fund products. Charter- holders employed within investment communications teams have a duty to fairly present their firms and funds' sustainability performance to underlying investors. All communications need to take account of the level of client understanding and appreciation of sustainable investments, particularly retail clients. Firm communications should fairly and clearly explain the firm's views of what distinguishes their sustainable investments from their other investments.

The regulations around "greenwashing" in marketing and communications are evolving rapidly, such as the "anti-greenwashing rule" in the UK from May 2024, the "green claims" directive in the EU, and the FTC's green marketing rules in the U.S. These regulations aim to address the risk of misleading or false sustainability claims, but are not uniform across different jurisdictions, making interpretation more difficult. Sustainability statements which investment firms might like to make require careful review against known available facts and relevant definitions. In recent years regulators have issued fines of over US $ 200m to various companies, including asset management firms, for related issues.

On the other hand, excessive regulatory and litigation risk may also trigger "green hushing" practices i.e. firms trying to downplay or omit references to positive sustainability impact.

The sustainability claims of an investment firm's fund managers and analysts need to be challenged by colleagues internally to ensure they are robust and can withstand subsequent regulatory scrutiny. As recent regulatory actions against several leading global investment firms have shown, a failure to do this is likely to result in subsequent censure, reputational damage, and potential fines.

2) Key CFA Institute standards relevant to institutional marketing roles:

CFA INSTITUTE STANDARD	RELEVANT ISSUE
I (A) KNOWLEDGE OF THE LAW	Investment communications staff are responsible for marketing their firm's investment products, often in multiple jurisdictions. As a result, they need to keep abreast of the current sustainability disclosure regulations in the markets into which they advertise or offer their products. This is particularly challenging currently as new standards and regulations are coming into force at different times in different jurisdictions.
I(C) MISREPRESENTATION	The investment industry has drawn some accusations of 'greenwashing' - the practice, often via marketing or sales materials, of overpromoting a given fund's social or environmental credentials. This is being increasingly monitored and supervised by regulators e.g. via SDR, SFDR, etc., and marketing staff need to be careful that they are accurately describing the real ESG characteristics of their products.
III (D) PERFORMANCE PRESENTATION	Reporting and positioning of investment performance is at the core of investment communications. In the context of sustainable investment strategies this can become more complex, and it is important to have an appropriate and transparent benchmark and ideally also explain performance attribution including the impact of ESG factors.
V (B) COMMUNICATION WITH CLIENTS AND PROSPECTIVE CLIENTS	Investment communications staff need to be careful to ensure that their communications with clients and potential clients regarding the sustainability credentials of their products are accurate. As much investment sustainability data is qualitative rather than quantitative and because some sustainability outputs are inherently difficult to measure, it can be easy to inadvertently overstate sustainability credentials.

APPLICATION OF THE CFA INSTITUTE STANDARDS (8 cases)

Issue 1: Presenting performance track records as ESG methodologies evolve

Example

Terry, CFA is asked to prepare a presentation for his firm's ESG integrated sustainable investment fund. Highlighting the ten-year track record, he chooses a leading ESG benchmark index as comparator and presents the relative performance of the fund over the last ten years as evidence that the fund has a winning strategy and reproducible performance. The presentation also highlights that, over the years, the managers have evolved their process to continually reflect their understanding of the wider impacts of corporate activity, particularly adding a process to align the fund to net zero 2050 targets. While Terry thinks the ESG benchmark is currently a better fit for the fund in terms of composition than a traditional benchmark, he knows it was only created two years ago. To compare performance over the ten-year horizon, he uses back-tested performance for the benchmark, a detail he does not, however, mention or even footnote in the presentation.

CFA UK Comment

CFA Institute's *Standard I(C) Misrepresentation* requires that information presented is 'fair, accurate and complete' so we think that Terry's presentation falls short of the expectations of this standard as he provides a relative performance over a time-period when the fund benchmark and the investment process have both significantly changed as climate impact has become an increasingly dominant theme. Terry has likely also violated *Standard III(D) Performance Presentation* by not making full disclosure of the basis of the historical performance. This would also be a violation of GIPS – "Asset owners must disclose the date and description of any changes to the benchmark over time", notwithstanding that "In most cases, the asset owner should change the benchmark going forward only and should not change it retroactively".

Issue 2: False marketing claims around ESG integration

Example

Robins, CFA works as a product specialist for a leading global asset manager. As part of his role, he is responsible for compiling marketing materials for use in client presentation documents. Recent management focus has been on ESG, and Robins is keen to highlight the firm's strategic aim to make the whole fund range ESG integrated. Whilst he was aware that the investment team was struggling to implement the new ESG integration strategy across its whole product range, he begins to make the claim in his materials that "all assets managed by the firm are ESG integrated". This is picked up by other colleagues in his firm who then also adopt it widely across the firm's marketing channels in multiple geographies. The following year a regulator asks to see evidence of this ESG integration. As Robins knew when he started to make his claims about ESG integration, the investment team had continued to struggle to implement the new strategy across its whole investment range. His firm is forced to admit to this regulator that a material fraction of assets under management did not have ESG considerations incorporated. The regulator announces its finding and fines Robins' firm for misleading marketing. Regulators in other geographies are alerted to the issue and Robins' firm faces accusations of greenwashing and suffers some significant client losses and reputational damage.

CFA UK Comment

Robins has probably violated CFA Institute's *Standard I(C) Misrepresentation* by knowingly overstating the firms' levels of ESG integration. Investment professionals who make false or misleading statements not only harm their direct investors but also reduce the level of investor confidence in the investment profession and undermine the integrity of capital markets as a whole. In a similar type of case, the SEC fined a leading fund manager $1.5m in 2022 for suggesting all the investments in certain funds had undergone an ESG review.

Issue 3: Failure to maintain knowledge of evolving sustainability laws

Example

Black, CFA works for Beta Fund Management, a medium-sized UK-based asset manager. Black has studied sustainable laws and regulations for the UK asset management industry with external education activities and study programmes, but the last one of these was over 2 years ago. She has now been assigned to a new ESG thematic fund that is expected to focus on compliance with national sustainability laws and regulations when making investment in the products covered. Black is thrilled to start communicating with clients and potential clients and disclosing to them what the eligibility criteria will be and which laws and regulations the fund will follow when making investments for them. She starts her marketing and communication activities, however, without checking what the updates are from the local regulators in terms of sustainability, as she believes she already has all the relevant knowledge and information from her previous education programmes and studies.

CFA UK Comment

Even though Black has dedicated much time to studying and updating herself on sustainability laws and regulations, we think Black could be in violation of CFA Institute's *Standard I(A) Knowledge of the Law* because she failed to stay informed and check the most recent applicable local laws and regulations before starting to communicate and engage with clients and potential clients. Black must be aware of the rapidly evolving requirements in this new and dynamic area. She should have sought guidance from appropriate, and reliable sources, such as the applicable legislation, official websites of regulators and approved external service providers sourced and contracted with by Beta Fund Management.

Issue 4: Making subjective and incomplete ESG claims and disclosures

Example

Ethan, CFA is responsible for the marketing of the ESG funds of an asset manager firm. She is currently trying to market a new fund that will focus on innovative AI-based technologies that can monitor and meaningfully address climate change. The fund's stock universe has been constructed relying on a combination of several complex rules based on her firm's investment system that can help determine both the (i) the 'integrity' of the technology and (ii) its potential

impact. However, when Ethan finalises the marketing material for both new and existing clients, she decides to simplify the communication and only show the "good" and the "bad" green technology stock universe against relative fund benchmarks, without specifying the details of her firm's system and the rules it follows to pick and trade the stocks. Nor does she explain that the analysis is a simplification of the outputs of the firm's investment system and that further details of the system itself are available. Ethan's decision relies heavily on her desire to boost her firm's presence in a new market niche given investors' current high interest in green and sustainable opportunities. She wants to avoid being dragged into spending too much time explaining all the details of her systems to both existing and prospective clients, though if clients ask, these details must be provided.

CFA UK Comment

We think that Ethan's plan and decision probably violates CFA Institute's *Standard V(B) Communications with Clients and Potential Clients* if she fails to properly describe and explain the investment system and rules in detail to her clients. The new fund is targeting new niche market opportunities which require the complete communication of all the relevant limitations and inherent risks of such investments. Whilst the marketing materials do not need to contain these details themselves, they need to reference the risks, and explain that further detail is available and ideally refer to other sources where they are described in sufficient detail. In a similar type of case, the EU regulator fined DWS $25m for potentially marketing ESG funds as 'greener' than they actually were.

Issue 5: Making full and proper disclosure of the investment process

Example

Boyd, CFA is employed as Investment Product Manager for XYZ Asset Managers and is responsible for their range of ESG and sustainable investment strategies. The XYZ fund management team have completed a review of their investment process updating how they integrate ESG and assess investments to incorporate both biodiversity and net zero alignment into their investment process. Working with XYZ's marketing and investment teams she produces a 30-page 'process explainer' for prospective institutional clients and to support RFP requests. As XYZ's product range is sold to both institutional and retail investors the retail marketing head informs Boyd that the purpose of the communication is to improve the positioning of the products in the retail market by highlighting they are now designed to deliver both biodiversity impact and net zero alignment. Since XYZ's categorization of its funds by risk and sustainability impact are unchanged the marketing head argues that a detailed communication of the revised process is not needed for retail clients. Boyd signs off on the 'headline-only' campaign, despite its lack of detail, or any signposting to detailed information regarding the new process and the firm's interpretation of the concepts of biodiversity and net zero alignment.

CFA UK Comment

We think that CFA Institute's *Standard V(B) Communications with Clients and Potential Clients* has been breached because of the 'headline-only' marketing campaign into the retail market and the lack of any signposting to more detailed information. All clients should be treated fairly and communicated to in a language and manner that they can clearly understand. In this case, for the sake of providing a simplified marketing message, retail investors have been denied a clear explanation of the changes in the investment process as there was no signposting of any further information being available. Boyd should have ensured that the detail of the change in the investment process was readily available to all investors if they wished to access it. Without easy access to more detailed information or an offer to receive further documentation and explanation we think she has breached CFA Institute's Standard V(B).

Issue 6: Misleading marketing and promotion terminology

Example

Future-Finance, a prominent financial services company, has launched a new line of investment funds marketed as "climate neutral." They partnered with EcoCertify, a consulting firm, to help achieve and certify this status. Future-Finance's advertisements prominently feature the term "climate neutral" and include a QR code linking to EcoCertify's webpage, where detailed information about the carbon offsetting measures is provided.
Ramon Valdez, CFA, the head of ethical investments at Future-Finance, spearheaded this initiative, believing it would attract eco-conscious investors. However, the German Competition Authority has filed a complaint against Future-Finance, arguing that the term "climate neutral" is misleading. The complaint claims that consumers might misinterpret the term to mean that the company has significantly reduced or eliminated emissions rather than offsetting them. Germany's top court ruled that the term must be clearly explained within the advertisement itself to avoid misleading consumers. The court decided that a QR code linking to more information was insufficient.

CFA UK Comment

We believe that Future-Finance has breached CFA Institute's *Standard I(C) Misrepresentation*, as the term "climate neutral" in its advertising was ambiguous and could mislead investors into thinking the company had significantly reduced or eliminated emissions, rather than offsetting them. Future-Finance should provide a clear explanation of what "climate neutral" means within the advertisement. *Standard V(B) Communication with Clients and Prospective Clients* is also likely to have been breached as the QR code linking to further information was found to be insufficient by the Court. Future-Finance should include explicit and comprehensive information about their climate-neutral measures in the advertisements themselves, ensuring that all relevant details, such as measures taken to offset carbon emissions, are readily accessible and understandable to investors without requiring additional steps. Given the legal ruling against Future-Finance, the team responsible was also evidently in breach of *Standard 1(A) Knowledge of the Law*, as it did not understand and comply with applicable rules, and regulations on sustainability disclosures.

Issue 7: Helping clients understand the investment process

Example

Green, CFA works at a UK based wealth manager in the sales and relationship management team. She is currently working with a client prospect who is interested in investing in a discretionary investment solution. The prospect also has stated an interest in sustainability issues. After a thorough client discovery process, Amanda believes the firm's sustainable portfolio is suitable for the client prospect. However, she believes that the process employed for the sustainable portfolio is too complicated for the prospective client to understand, as they are not a sophisticated investor. Instead of providing a full description of what sets the sustainable portfolio apart from a traditional one, during various pitches, she just states that it "only invests in good companies from an environmental and social perspective" and suggests that the fund would suit her because of her declared interest in sustainability issues. The client seems happy with this explanation throughout, and eventually agrees to invest in the solution.

CFA UK Comment

Green must ensure that her communication with the client satisfies her obligations under CFA Institute's *Standard V(B)*. While she need not describe the investment process in detail, she must outline its basic principles. This is particularly relevant with sustainable investing, due to the subjective nature of many of the issues at hand. Just because the client has expressed an interest in sustainability, it does not automatically follow that this fund's investment process meets her expectations of what a sustainable portfolio may look like. In a related case the SEC fined a prominent asset manager $4m for failing to follow its ESG investment policies and misleading its customers.

Issue 8: Dissociating from and reporting potential unethical actions

Example

D'Souza, CFA, works as a sales director for Omega Asset Management based in Europe, which has an existing sustainability fund being marketed to potential investors in Europe. Since the fund's launch some years ago, the EU has introduced minimum standards for sustainability funds being marketed to investors in Europe. D'Souza discusses this with her line manager, Akimwola, CFA, who concludes that the team does not need to assess whether the existing fund is compliant with the standards because the fund was launched prior to the introduction of the EU's minimum standards. D'Souza does not agree with this and feels it is unethical and non-compliant.

CFA UK Comment

This is a violation by Akimwola of CFA Institute's Standard *I(A) Knowledge of the Law*, as well as likely to be a regulatory breach (depending on the details of the case). From D'Souza's

perspective, in order to remain in compliance with the Standards and the regulations, D'Souza should escalate the issue and discuss it with Omega's compliance department. Pending guidance from compliance, D'Souza can temporarily dissociate themselves from the potential violation by not taking any part in the marketing of the sustainability fund until an assessment vis a vis the minimum standards has been made. Omega Asset Management should not market the product into Europe until it has been confirmed by compliance that there is no breach or the required action i.e. re-assessment is completed.